

JOHN D. GIFFIN, CASB No. 89608
john.giffin@kyl.com
JULIE L. TAYLOR, CASB NO. 154341
julie.taylor@kyl.com
JULIE A. KOLE, CASB NO. 203681
Julie.kole@kyl.com
KEESAL, YOUNG & LOGAN
A Professional Corporation
Four Embarcadero Center, Suite 1500
San Francisco, California 94111
Telephone: (415) 398-6000
Facsimile: (415) 981-0136

Attorneys for Defendant
REGAL STONE, LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Chelsea, LLC, Mark Russo, Allen)	Case No. C-07-5800-SC
Loretz, and Ivan Simpson, individually)	
and on behalf of all others similarly)	REGAL STONE LTD.'S RESPONSE TO
situated,)	THE UNITED STATES'
)	REPLY/RESPONSE TO REGAL
)	STONE LTD.'S OPPOSITION TO EX
Plaintiffs,)	PARTE MOTION FOR AN ORDER TO
)	SHOW CAUSE
vs.)	
)	
Regal Stone, Ltd., Hanjin Shipping,)	Courtroom: 1, 17 th Floor
Co., Ltd., Conti Cairo KG, NSB)	Honorable Samuel J. Conti
Neiderelbe, Synergy Maritime, Ltd. <i>In</i>)	
<i>Personam</i> ; M/V Cosco Busan, their)	
engines, tackle, equipment)	
appurtenances, freights, and cargo <i>In</i>)	
<i>Rem</i> ,)	
)	
Defendants.)	

Regal Stone Ltd., ("Regal Stone"), which has made a limited appearance on behalf of the COSCO BUSAN *in rem*, hereby respectfully submits its Response to the United States' Reply/Response to Regal Stone's Opposition.

1 **I. INTRODUCTION**

2 Contrary to the assertions by the United States in its Reply/Response,
3 Regal Stone has not represented to this Court that the United States controls the day-to-
4 day settlement decisions with regard to the claims process administered by Hudson
5 Marine Management Service ("HMMS"). As stated in Regal Stone's Opposition,
6 pursuant to the Oil Pollution Act of 1990 ("OPA '90") 33 U.S.C. § 2710 *et seq.*, claimants
7 are required to first submit their claim to HMMS, which is the claims administrator
8 retained by Regal Stone as the Responsible Party in this matter. If a claimant receives
9 an offer from HMMS and rejects it, he or she is then free to submit his or her claim to
10 the National Pollution Fund (the "Fund") for resolution, or proceed in a lawsuit. (See,
11 previously filed Declaration of Cynthia Hudson in Support of Opposition to Ex Parte
12 Motion ("Hudson Decl."), ¶¶ 3, 12.)

13 The federal government oversees and directs certain aspects of the HMMS claims
14 process, as well as the subsequent claims process to the Fund. See 33 U.S.C. § 2710 *et*
15 *seq.* and 33 C.F.R. § 136.1 *et seq.* Regal Stone's description of the federal government's
16 involvement in this process was included in its Opposition for the sole purpose of
17 establishing that there is federal oversight of the claims process.¹ Indeed, as set forth in
18 more detail below, the federal government has not disputed numerous aspects of its
19 involvement in this process, including but not limited to, its receipt of daily/weekly
20 reports on the claims process, its retention of the authority to unilaterally take over the
21 claims process if it determines that HMMS is not adequately conducting the process and
22 its recent review of a report regarding the details of the claims process that the Senior
23 Vice President of HMMS personally provided to the National Pollution Fund Committee
24 in Washington D.C. (See, Hudson Decl., ¶13.)

25
26
27 ¹ To the extent that Regal Stone's Opposition was unclear as to whether certain aspects of the
28 government's involvement in the overall claims process applied to claims to HMMS or to the Fund, this
response is intended to clarify any such ambiguities.

Moreover, the United States has in no way criticized or in any way disagreed with HMMS's handling of the claims process to date. Indeed, the United States' brief provides no support whatsoever for Plaintiffs' request that this Court interfere with the federally mandated claims process. Accordingly, for the reasons set forth herein and in Regal Stone's Opposition, Plaintiffs' request for an order to show cause should be denied.

II. IT IS UNDISPUTED THAT THE UNITED STATES GOVERNMENT OVERSEES THE HMMS CLAIMS PROCESS

In is undisputed that the United States Coast Guard ("USCG") oversees and direct certain aspects of the HMMS claims process, including, but not limited to, the following:

- Reviewing daily/weekly reports submitted by HMMS, the company hired by Regal Stone's third-party insurer that is responsible for processing all claims submitted to it for damages resulting from the oil spill (Hudson Decl. ¶ 13);
- Obtaining extensive information regarding the claims process and efficacy through the Federal On Scene Commander ("FOSC") Captain Paul Gugg (and various of Unified/Incident Command representatives) (*Id.*);
- Retaining authority to at any time unilaterally take over the claims process if it determines that HMMS is not adequately conducting the process (*Id.*);
- Reviewing a detailed report regarding the claims process, which was personally presented by Senior Vice President Cynthia Hudson to the National Pollution Fund Committee in Washington D.C. (*Id.*);
- Directing HMMS on the type, geographic scope, frequency, and duration of advertisement required to provide information to the public about the claims process and submitting a claim to HMMS for any damages. (33 C.F.R. § 136.309(a) & (c); see also November 9, 2007 Notice of Designation issued by the United States Coast Guard to Regal Stone, attached as Exhibit "A" to the concurrently filed Declaration of

1 John D. Giffin ("Giffin Decl.").

2 Moreover, the USCG has established an Incident Command System (ICS) for oil
3 spill responses, which further establishes the oversight responsibilities of the FOSC.
4 (See, USCG Field Operations Guide for the ICS, attached to Giffin Decl. as Exhibit "B.")
5 As set forth in the ICS Field Operations Guide, the ICS Compensation/Claims process is
6 under FOSC oversight. (See, Giffin, Decl., Exhibit "B," p. 2-4.) The
7 Compensation/Claims Unit Leader "is responsible for the overall management and
8 direction of all administrative matters pertaining to compensation-for-injury and claims-
9 related activity for the [oil spill] incident." (See, Giffin Decl., Exhibit "B," p. 11-8.) The
10 Compensation/Claims unit can be staffed with either government or civilian
11 representatives. In this instance, the government has approved HMMS to handle this
12 process. However, as set forth above, the government has continued to oversee various
13 aspects of the process.
14
15


16 **III. THE UNITED STATES GOVERNMENT HAS NOT OBJECTED TO OR**
17 **CRITICIZED THE HMMS CLAIMS PROCESS**

18 The United States government has been provided with extensive information
19 regarding the ongoing HMMS claims process and has the right to unilaterally take over
20 the claims process if it determines that HMMS is not adequately conducting the process.
21 However, nowhere in the United States' Reply/Response does it criticize the claims
22 process. Moreover, to date, the government has not advised HMMS that the claims
23 process is viewed by the USCG or the NPFC as anything less than exemplary. (Hudson
24 Decl., ¶13.) The government also has not exercised its authority to take over the claims
25 process. Accordingly, Plaintiffs' position that this Court should interfere with this
26 federally mandated claims process finds no support in the government's Reply/Response.
27
28

1 **IV. CONCLUSION**

2 Plaintiffs' request to enjoin a process by which potential class members can avoid
3 costly and drawn out litigation finds no support in the United States' Reply/Response.
4 The United States has in no way criticized the claims process, nor has it requested that
5 the court interfere with the claims process. Accordingly, Plaintiffs' request for an order
6 to show cause should be denied.

7
8 DATED: February 5, 2008


9 JOHN D. GIFFIN
10 JULIE L. TAYLOR
11 JULIE A. KOLE
12 KEESAL, YOUNG & LOGAN
13 ATTORNEYS FOR DEFENDANT
14 REGAL STONE, LTD
15
16
17
18
19
20
21
22
23
24
25
26
27
28